

REMARKS/ARGUMENT

Description of Amendments

Applicants have amended claims 28, and 30-31 and added new claims 41-43.

No new matter is introduced by this amendment.

Claim 30 has been incorporated into claim 28. Claim 30 has been cancelled. Claim 31 has been amended to include the limitation that the porous metallic region holds a therapeutic substance that is released after the stent has been implanted in a vessel. Support for the amendments to claims 28 and 31 is found at least on page 15, lines 7-13. Support for claim 42 is at least found on page 15, line 3 of the specification. Support for claims 41 and 43 is at least found on page 15, lines 7-13, and Figure 6. Entry of the amendments is respectfully requested.

35 USC 112

Claims 29 and 32 have been rejected under 35 USC 112, first paragraph, as failing to comply with the written description requirement. Applicant respectfully traverses for at least the following reasons.

The original disclosure in the parent application Serial No. 08/837,993, now issued as US 6, 240, 616 contains support for porous metallic material made of metal filaments or fibers. With reference to the disclosure as it appears in the '616 patent at col. 5, line 61, to col. 6, line 14, the original disclosure states that elongated fibers or filaments may be used as an alternative of spherical particles.

FIG. 4 illustrates an alternative embodiment of a stent wire 30 constructed according to the present invention. The stent is formed of elongated particles 32, i.e., filaments and fibers. Sintered particles (24 of FIG. 2) that are generally spherical in shape are capable of forming sintered metal having a porosity in the range of 0.30 to 0.05. However, when filaments or fibers 32 are sintered, the porosity can be increased above 0.30. The technique of fabricating a stent with elongated filaments or fibers are similar to the method described above for spherical particles or powders. The filaments or fibers are molded and pressurized. Then the fibers are heated to a temperature just below the melting point of the metal.

('616 at Col. 5, l. 61 to col.6, l 1-6).

The same language is in the present application beginning at page 13, l. 19 to page 14, l. 3. One of ordinary skill in the art, based on this disclosure, would have concluded that the inventors were in possession of a porous metallic region or materials made from sintered particles, filaments or fibers as claimed in claims 29 and 32. The quoted passage above discloses how filaments or fibers may “similarly” be used in place of spherical particles or powders.

Withdrawal and reconsideration of the rejection is respectfully requested.

Rejection under 35 U.S.C. §102 and 35 U.S.C. §103

Claims 28-32 have been rejected under 35 U.S.C. §102, as being anticipated by or, in the alternative, under 35 U.S.C. §103 as obvious over, Pinchuk (US 5,163,958). Applicant respectfully traverses for at least the following reasons.

Amended independent claims 28 and 31 have the limitation of the porous metallic region holding a therapeutic substance for releasing of the substance after the stent has been implanted in a vessel. This limitation is not specifically taught or suggested by Pinchuk. Pinchuk teaches the use of an underlayer of sintered beads or strands. A carbon coating overlies the underlayer. Pinchuk is concerned with endothelialization and tissue ingrowth. (Col. 5, ll. 56-63). No disclosure of using a releasable therapeutic substance is made or suggested by Pinchuk.

Further, Pinchuk teaches away from using a stent without the amorphous carbon layer where he discloses that “[w]ithout the amorphous carbon layer 44, a large surface area stent such as stent 41 would plug up after implantation.” (See Col. 6, ll. 4-6). Therefore, new claims 41 and 43, which have the limitation that the outermost layer contains the deliverable therapeutic substance, are neither taught nor suggested by Pinchuk.

Accordingly, Applicant requests withdrawal and reconsideration of the rejection of claims 28-29, and 31-32 under §102 and §103.

Conclusion

In light of the foregoing remarks, this application is considered to be in condition for allowance, and early passage of this case to issue is respectfully requested. If necessary to effect

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a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 07-1850.

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Respectfully submitted,

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